

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20549

28 2 16 PM '93

MM Docket No. 92-238 DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8078
Table of Allotments,
FM Broadcast Stations.
(Campbellsville and
Mannsville, Kentucky)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 6, 1993;

Released: April 28, 1993

By the Chief, Allocations Branch:

1. At the request of Patricia Rodgers ("Rodgers"), the Commission has before it the *Notice of Proposed Rule Making*, 7 FCC Rcd 7159 (1992), proposing the substitution of Channel 260C3 for Channel 260A at Campbellsville, Kentucky, and the reallocation of Channel 260C3 from Campbellsville, Kentucky, to Mannsville, Kentucky. Rodgers also requests the modification of her construction permit for Station WVLC(FM) to specify Mannsville, Kentucky, as its community of license. Rodgers filed supporting comments. Heartland Communications, Inc. ("Heartland"), licensee of Stations WCKQ(FM), Channel 281C3, Campbellsville, Kentucky, filed comments and a counterproposal. Rodgers filed reply comments.¹ After the record closed Heartland filed a reply to Rodgers' comments in opposition to the counterproposal, and Rodgers filed a motion to strike.²

2. We believe the public interest would be served by reallocating Channel 260A from Campbellsville, Kentucky to Mannsville, Kentucky, as a Class C3 channel, and by modifying the construction permit for Station WVLC(FM) to specify Mannsville, Kentucky as its community of li-

cense. Rodgers has demonstrated that the reallocation would result in a preferential arrangement of allotments. Mannsville, an unincorporated Census Designated Place with a 1990 U.S. Census population of 2,145 persons, will be provided with its first local aural transmission service. Campbellsville (population 9,577) will continue to receive local aural transmission service from Stations WTCO(AM) and WCKQ(FM).

3. Channel 260C3 can be allotted to Mannsville in compliance with the Commission's minimum distance separation requirements at the proposed transmitter site 21.4 kilometers (13.3 miles) south,³ in order to avoid a short-spacing to Station WDJX(FM), Channel 259B, Louisville, Kentucky. In accordance with Section 1.420(i) of the Commission's Rules, we will modify the construction permit for Station WVLC(FM) to specify Mannsville, Kentucky, as its community of license.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 14, 1993, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Campbellsville, Kentucky	281C3
Mannsville, Kentucky	260C3

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit for Station WVLC(FM), Channel 260A, IS MODIFIED, to specify operation on Channel 260C3 at Mannsville, Kentucky, in lieu of Channel 260A at Campbellsville, Kentucky, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

¹ Heartland's counterproposal is technically defective and was not placed on public notice. Heartland's counterproposal proposes to reallocate Channel 260A from Campbellsville, Kentucky, to Dunnville, Kentucky, as a first local FM service, and allot Channel 260A to Brownsville, Kentucky, as a first local FM service. Heartland expresses an interest in applying for Channel 260A at Brownsville, Kentucky. The allotment of Channel 260A at Brownsville is contingent on the reallocation of Channel 260A to Dunnville, Kentucky. However, Rodgers has not expressed an interest in applying for and constructing a station at Dunnville or in the modification of its authorization to an alternate community. Absent a timely expression of interest from the permittee, we will not consider the reallocation of Channel 260A to Dunnville. See *Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1988), *aff'd*, 4 FCC Rcd 3412 (1989); *aff'd sub nom. Amor Family Broadcasting v. FCC*, 918 F.2d 960 (D.C. Cir. 1990). Furthermore, Heartland's proposal would require Rodgers to relocate her transmitter site. Absent a statement

from the permittee or licensee agreeing to such a proposal, the Commission will not consider the relocation of a transmitter site to accommodate another facility. See *Mt. Morris and Savanna, Illinois, Belle Plaine, Maquoketa, Webster City and Winterset, Iowa*, 4 FCC Rcd 5485 (1989), *recon. denied*, 5 FCC Rcd 2683 (1990). Rodgers' willingness to change her community of license and transmitter site is limited to her proposal to change the community of license for Station WVLC(FM) to Mannsville. Therefore, Heartland's counterproposal is unacceptable for rule making and all responsive comments thereto will not be discussed.

² The Commission's Rules do not contemplate the filing of pleadings beyond the comment and reply comment periods. Therefore, in accordance with Section 1.415(d) of the Commission's Rules, we shall not accept the unauthorized pleadings.

³ The coordinates for Channel 260C3 at Mannsville are North Latitude 37-11-00 and West Longitude 85-08-33.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Patricia Rodgers, permittee of Station WVLC(FM) is required to submit a rule making fee in addition to the fee required for the application to effect the change of community of license and upgrade.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau